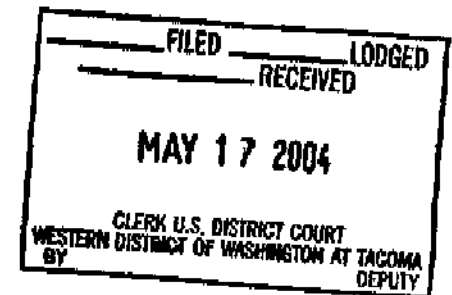


Judge Leighton



04-CR-05134-MISC

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RYAN ANDREW HAMBURG,

Defendant.

NO. CR04-5134RBL

PLEA AGREEMENT

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Reagan Dunn, Assistant United States Attorney for said District, and the defendant, RYAN ANDREW HAMBURG, and his attorney, Jerome Kuh, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. The Charge. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charge contained in the Indictment. By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document.

a. Possession of Visual Depictions of Minor Engaged in Sexually Explicit Conduct, in violation of Title 18, United States Code, Section 2252(a)(4)(B), 2252(b)(2), and 2256.

Pursuant to the Allegation of Forfeiture contained in the Indictment, defendant

PLEA AGREEMENT/Hamburg — 1

1 also agrees to forfeit to the United States any and all matter which contains visual  
2 depictions produced, transported, shipped, possessed and received in violation of Title  
3 18, United States Code, Sections 2251 and 2252, and any and all property used or  
4 intended to be used in any matter or part to commit and to promote the commission of  
5 the aforementioned violation, including, but not limited to, the items seized during the  
6 course of this investigation, pursuant to Title 18, United States Code, Section 2253(a).

7       2.     Elements of the Offense. Defendant acknowledges and understands that  
8 the elements of the offenses charged in the Indictment are as follows:

9           a.     That the defendant (1) knowingly possessed one or more matters  
10 which contained visual depictions of minors engaged in sexually explicit conduct; (2)  
11 the visual depictions had been mailed, or shipped or transported in interstate or foreign  
12 commerce, by any means, including by computer, or were produced using materials  
13 which had been mailed or so shipped or transported by any means, including computer;  
14 and (3) the producing of said visual depictions involved the use of known minors  
15 engaging in sexually explicit conduct, and said visual depictions were of such conduct,  
16 as that term is defined by Title 18, United States Code, Section 2256.

17       3.     The Penalties. Defendant understands that the statutory penalties for the  
18 offenses charged in the Indictment are as follows:

19           a.     A term of not more than 10 years' imprisonment; a fine of up to  
20 Two Hundred Fifty Thousand dollars (\$250,000), or both; a period of supervised  
21 release of at least two (2) years but not more than three (3) years; and a one hundred  
22 dollar (\$100.00) penalty assessment. Defendant agrees that the penalty assessment  
23 shall be paid at or before the time of sentencing.

24       Defendant understands that in addition to any term of imprisonment and/or fine  
25 that is imposed, the Court may order Defendant to pay restitution to any victim of the  
26 offense, as required by law.

27       Defendant agrees that any monetary penalty the Court imposes, including the  
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1 special assessment, fine, costs or restitution, is due and payable immediately, and  
 2 further agrees to submit a completed *Financial Statement of Debtor* form as requested  
 3 by the United States Attorney's Office.

4 Defendant understands that supervised release is a period of time following  
 5 imprisonment during which he will be subject to certain restrictions and requirements.  
 6 Defendant further understands that if supervised release is imposed and he violates one  
 7 or more of its conditions, he could be returned to prison for all or part of the term of  
 8 supervised release that was originally imposed. This could result in Defendant serving  
 9 a total term of imprisonment greater than the statutory maximum.

10 4. Rights Waived by Pleading Guilty. Defendant understands that, by  
 11 pleading guilty, he knowingly and voluntarily waives the following rights:

12 a. The right to plead not guilty, and to persist in a plea of not guilty;  
 13 b. The right to a speedy and public trial before a jury of Defendant's  
 14 peers;

15 c. The right to the effective assistance of counsel at trial, including, if  
 16 Defendant could not afford an attorney, the right to have the Court appoint one for  
 17 Defendant;

18 d. The right to be presumed innocent until guilt has been established  
 19 at trial, beyond a reasonable doubt;

20 e. The right to confront and cross-examine witnesses against  
 21 Defendant at trial;

22 f. The right to compel or subpoena witnesses to appear on  
 23 Defendant's behalf at trial;

24 g. The right to testify or to remain silent at trial, at which trial such  
 25 silence could not be used against Defendant; and

26 h. The right to appeal a finding of guilt or any pretrial rulings.

27 5. Applicability of Sentencing Guidelines. Defendant understands and  
 28

1 acknowledges the following:

2 a. The United States Sentencing Guidelines, promulgated by the  
3 United States Sentencing Commission, are applicable to this case;

4 b. The Court will determine defendant's applicable Sentencing  
5 Guidelines range at the time of sentencing;

6 c. The Court may impose any sentence authorized by law, including a  
7 sentence that, under some circumstances, departs from any applicable Sentencing  
8 Guidelines range up to the maximum term authorized by law

9 d. The Court is not bound by any recommendation regarding the  
10 sentence to be imposed, or by any calculation or estimation of the Sentencing  
11 Guidelines range offered by the parties, or by the United States Probation Department;  
12 and

13 e. Defendant may not withdraw a guilty plea solely because of the  
14 sentence imposed by the Court.

15 6. Ultimate Sentence. Defendant acknowledges that no one has promised or  
16 guaranteed what sentence the Court will impose.

17 7. Statement of Facts. The parties agree on the following facts in support of  
18 Defendant's guilty plea and for purposes of calculating the base offense level of the  
19 Sentencing Guidelines. Defendant admits he is guilty of the charged offense.

20 On February 3, 2004 Immigration and Customs Enforcement (ICE) agents seized  
21 a laptop computer from RYAN ANDREW HAMBURG. The laptop contained more  
22 than 100 photographs of child pornography. HAMBURG admitted that these pictures  
23 were his and had knowingly been in possession of them at the time they were seized by  
24 federal agents.

25 8. Non-Prosecution of Additional Offenses. As part of this Plea  
26 Agreement, the United States Attorney's Office for the Western District of Washington  
27 agrees not to prosecute Defendant for any additional offenses known to it as of the time  
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1 of this Agreement that are based upon evidence in its possession at this time, or that  
2 arise out of the conduct giving rise to this investigation. In this regard, Defendant  
3 recognizes that the United States has agreed not to prosecute all of the criminal charges  
4 that the evidence established were committed by Defendant solely because of the  
5 promises made by Defendant in this Agreement. Defendant acknowledges and agrees,  
6 however, that for purposes of preparing the Presentence Report, the United States  
7 Attorney's Office will provide the United States Probation Office with evidence of all  
8 relevant conduct committed by Defendant.

9       9. Voluntariness of Plea. Defendant acknowledges that he has entered this  
10 Plea Agreement freely and voluntarily, and that no threats or promises, other than the  
11 promises contained in this Plea Agreement, were made to induce Defendant to enter  
12 this plea of guilty.

13       10. Acceptance of Responsibility. The United States acknowledges that if the  
14 defendant qualifies for an acceptance of responsibility adjustment pursuant to U.S.S.G.  
15 § 3E1.1(a) and if the offense level is sixteen (16) or greater, defendant's total offense  
16 level should be decreased by three (3) levels pursuant to U.S.S.G. § § 3E.1.1(a) and  
17 (b), because Defendant has assisted the United States by timely notifying the authorities  
18 of his intention to plead guilty, thereby permitting the United States to avoid preparing  
19 for trial and permitting the Court to allocate its resources efficiently.

20       11. Additional Agreements. The parties jointly agree that for purposes of  
21 calculating the sentencing range under U.S.S.G. 2G2.4(b)(5), that the number of  
22 qualifying images shall be less than 150 but more than 10, and that the defendant's base  
23 offense level shall be increased by two (2) points based upon this subsection.

24       12. Statute of Limitations. In the event that this Agreement is not accepted by  
25 the Court for any reason, or Defendant has breached any of the terms of this Plea  
26 Agreement, the statute of limitations shall be deemed to have been tolled from the date  
27 of the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea  
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1 Agreement by the Court; or (2) 30 days following the date on which a breach of the  
2 Plea Agreement by Defendant is discovered by the United States Attorney's Office.

3 13. Post-Plea Conduct. Defendant understands that the terms of this Plea  
4 Agreement apply only to conduct that occurred prior to the execution of this  
5 Agreement. If, after the date of this Agreement, Defendant should engage in conduct  
6 that would warrant an increase in Defendant's adjusted offense level or justify an  
7 upward departure under the Sentencing Guidelines (examples of which include, but are  
8 not limited to: obstruction of justice, failure to appear for a court proceeding, criminal  
9 conduct while pending sentencing, and false statements to law enforcement agents, the  
10 probation officer or Court), the United States is free under this Agreement to seek a  
11 sentencing enhancement or upward departure based on that conduct.

12 14. Completeness of Agreement. The United States and Defendant  
13 acknowledges that these terms constitute the entire Plea Agreement between the parties.  
14 This Agreement only binds the United States Attorney's Office for the Western District  
15 of Washington. It does not bind any other United States Attorney's Office or any other  
16 office or agency of the United States, or any state or local prosecutor.

17 DATED: This 17<sup>th</sup> day of May, 2004.

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19   
20 RYAN ANDREW HAMBURG  
Defendant

21  
22   
JEROME KUH  
Attorney for Defendant

23  
24   
SUSAN HARRISON  
Assistant United States Attorney

25  
26   
REAGAN DUNN  
Assistant United States Attorney